
HOUSE BILL 2815

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59th Legislature

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By Representatives Simpson, Jarrett, Springer and Lantz; by request of Department of Community, Trade, and Economic Development

Read first time 01/13/2006. Referred to Committee on Local Government.

1 AN ACT Relating to clarifying the best available science
2 requirements to protect critical areas; and amending RCW 36.70A.172,
3 36.70A.280, 36.70A.290, and 36.70A.300.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
6 read as follows:

7 (1) In designating and protecting critical areas under this
8 chapter, counties and cities shall include the best available science
9 in developing policies and development regulations to protect the
10 functions and values of critical areas. In addition, counties and
11 cities shall give special consideration to conservation or protection
12 measures necessary to preserve or enhance anadromous fisheries.

13 (2) If it determines that advice from scientific or other experts
14 is necessary or will be of substantial assistance in reaching its
15 decision, a growth management hearings board may retain scientific or
16 other expert advice to assist in reviewing a petition under RCW
17 36.70A.290 that involves critical areas. The growth management
18 hearings boards are directed to adopt procedures and criteria for

1 retaining scientific or other experts under this section and RCW
2 36.70A.270.

3 (3) In the development of critical areas policies and development
4 regulations, counties and cities must address each of the following on
5 the record:

6 (a) To demonstrate that the best available science was included:

7 (i) The specific policies and development regulations adopted to
8 protect the functions and values of critical areas; and

9 (ii) The sources of best available scientific information included
10 in the decision making; and

11 (b) Any other information, including legal, social, cultural,
12 economic, and political information, and other programs that may have
13 been included in developing critical areas policies and regulations.

14 (4)(a) The department, in collaboration with other state agencies
15 with jurisdiction and expertise, may adopt written management
16 recommendations for optional use by cities and counties in protecting
17 the functions and values of one or more critical areas listed in RCW
18 36.70A.030(5).

19 (b) State agencies must include the best available science in
20 developing management recommendations for protecting the functions and
21 values of critical areas, with consideration of regional differences
22 among critical areas.

23 (c) Management recommendations for cities and counties proposed by
24 the department in collaboration with other state agencies under this
25 subsection must be approved through the following process:

26 (i) The proposed management recommendations shall be submitted for
27 technical review by scientists and other professionals with expertise
28 in the relevant scientific and professional disciplines. The reviewing
29 scientists and other professionals with expertise shall be from
30 organizations including but not limited to academic institutions;
31 federal, state, local, and tribal governments; and the private sector.
32 The results of this technical review must be summarized in writing and
33 made available on the department's web site;

34 (ii) Following completion of the technical review process in (c)(i)
35 of this subsection, notice of the proposed management recommendations
36 must be published in the state register, and the department must
37 maintain the full text of the proposed management recommendations on
38 its web site and accept public comment for a minimum of sixty days from

1 the date of publication. Comments received during this public review
2 period must be made available on the department's web site, and will be
3 considered by the department, in collaboration with other state
4 agencies with jurisdiction and expertise. Summaries may be provided in
5 lieu of voluminous or repetitive comments;

6 (iii) At the close of the technical review process and the public
7 review period, the department may adopt the management recommendations
8 by causing a notice of proposed management recommendations for
9 protecting the functions and values of critical areas to be published
10 in the state register and on the department's web site. Notice shall
11 also be provided to persons submitting comments on the proposed
12 management recommendations during the public review period; and

13 (iv) At the end of sixty days from the date the notice of proposed
14 management recommendations for protecting the functions and values of
15 critical areas is published in the state register, if no petition for
16 review of the management recommendation has been filed under RCW
17 36.70A.290, the department shall cause a notice of adoption of final
18 management recommendations for protecting the functions and values of
19 critical areas to be published in the state register and on the
20 department's web site. If a petition for review is filed within sixty
21 days, the publication of a notice of final management recommendations
22 for protecting the functions and values of critical areas shall be
23 delayed until the petition is finally resolved and the management
24 recommendations are found to comply with this chapter.

25 (d) At least once every five years, the department, in
26 collaboration with other state agencies with jurisdiction and
27 expertise, shall review and, if necessary to incorporate best available
28 science that has become available or otherwise to comply with this
29 chapter, update the management recommendations adopted under this
30 subsection. The department shall cause a notice of proposed update of
31 management recommendations for protecting the functions and values of
32 critical areas or a notice of a decision not to update management
33 recommendations for protecting the functions and values of critical
34 areas to be published in the state register and on the department's web
35 site.

36 (i) Following publication of a notice of proposed update of
37 management recommendations, amendments to the management

1 recommendations shall be adopted through the process set forth in (c)
2 of this subsection and shall be appealable in the same manner and to
3 the same extent as the initial management recommendations.

4 (ii) Following publication of a notice of a decision not to update
5 management recommendations, any interested person may file a petition
6 for review of the department's decision within the time provided in RCW
7 36.70A.290(3). The sole issue before the growth management hearings
8 board shall be whether the department's decision not to update
9 management recommendations under (d) of this subsection was clearly
10 erroneous.

11 (e) Where a county or city states specifically that it has chosen
12 to develop and adopt all or a portion of its critical areas policies
13 and regulations through application of final management recommendations
14 adopted under this subsection, the growth management hearings board or
15 a reviewing court shall review the county or city policies and
16 regulations only for consistency with those portions of the final
17 management recommendations specified by the county or city. The board
18 or court shall review all other portions of critical areas policies and
19 regulations for compliance with subsections (1) and (3) of this
20 section.

21 (f) Where a county or city chooses not to apply final management
22 recommendations adopted under this section when developing its critical
23 areas policies and regulations, the growth management hearings board or
24 a reviewing court shall review the policies and regulations for
25 compliance with subsections (1) and (3) of this section.

26 (g) A growth management hearings board or a reviewing court shall
27 not consider final management recommendations adopted under this
28 subsection to be the only means of complying with this chapter's
29 critical areas protection requirements and best available science
30 requirements, nor shall a board or court consider final management
31 recommendations to establish a minimum standard for identifying the
32 best available science or protecting the functions and values of
33 critical areas.

34 (h) This subsection does not alter the requirements in RCW
35 36.70A.106.

36 **Sec. 2.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read
37 as follows:

1 (1) A growth management hearings board shall hear and determine
2 only those petitions alleging either:

3 (a) That a state agency, county, or city planning under this
4 chapter is not in compliance with the requirements of this chapter,
5 chapter 90.58 RCW as it relates to the adoption of shoreline master
6 programs or amendments thereto, or chapter 43.21C RCW as it relates to
7 plans, development regulations, or amendments, adopted under RCW
8 36.70A.040 or chapter 90.58 RCW; ~~((or))~~

9 (b) That the twenty-year growth management planning population
10 projections adopted by the office of financial management pursuant to
11 RCW 43.62.035 should be adjusted; or

12 (c) That management recommendations adopted by the department under
13 RCW 36.70A.172(4) do not comply with the requirements of RCW
14 36.70A.172(4), or that the department's decision not to update
15 management recommendations under RCW 36.70A.172(4)(d) is clearly
16 erroneous. Any appeal under this subsection (1)(c) must be heard by a
17 panel comprised of at least two members from each of the three growth
18 management hearings boards.

19 (2) Except for petitions filed under subsection (1)(c) of this
20 section, a petition may be filed only by: (a) The state, or a county
21 or city that plans under this chapter; (b) a person who has
22 participated orally or in writing before the county or city regarding
23 the matter on which a review is being requested; (c) a person who is
24 certified by the governor within sixty days of filing the request with
25 the board; or (d) a person qualified pursuant to RCW 34.05.530. A
26 petition may be filed under subsection (1)(c) of this section only by
27 a person who has submitted comments during the public review period
28 specified in RCW 36.70A.172(4)(c)(ii).

29 (3) For purposes of this section "person" means any individual,
30 partnership, corporation, association, state agency, governmental
31 subdivision or unit thereof, Indian tribe, or public or private
32 organization or entity of any character.

33 (4) To establish participation standing under subsection (2)(b) of
34 this section, a person must show that his or her participation before
35 the county or city was reasonably related to the person's issue as
36 presented to the board.

37 (5) When considering a possible adjustment to a growth management

1 planning population projection prepared by the office of financial
2 management, a board shall consider the implications of any such
3 adjustment to the population forecast for the entire state.

4 The rationale for any adjustment that is adopted by a board must be
5 documented and filed with the office of financial management within ten
6 working days after adoption.

7 If adjusted by a board, a county growth management planning
8 population projection shall only be used for the planning purposes set
9 forth in this chapter and shall be known as a "board adjusted
10 population projection". None of these changes shall affect the
11 official state and county population forecasts prepared by the office
12 of financial management, which shall continue to be used for state
13 budget and planning purposes.

14 **Sec. 3.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
15 read as follows:

16 (1) All requests for review to a growth management hearings board
17 shall be initiated by filing a petition that includes a detailed
18 statement of issues presented for resolution by the board. The board
19 shall render written decisions articulating the basis for its holdings.
20 The board shall not issue advisory opinions on issues not presented to
21 the board in the statement of issues, as modified by any prehearing
22 order.

23 (2) All petitions relating to whether or not an adopted
24 comprehensive plan, development regulation, or permanent amendment
25 thereto, is in compliance with the goals and requirements of this
26 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
27 after publication by the legislative bodies of the county or city.

28 (a) Except as provided in (c) of this subsection, the date of
29 publication for a city shall be the date the city publishes the
30 ordinance, or summary of the ordinance, adopting the comprehensive plan
31 or development regulations, or amendment thereto, as is required to be
32 published.

33 (b) Promptly after adoption, a county shall publish a notice that
34 it has adopted the comprehensive plan or development regulations, or
35 amendment thereto.

36 Except as provided in (c) of this subsection, for purposes of this

1 section the date of publication for a county shall be the date the
2 county publishes the notice that it has adopted the comprehensive plan
3 or development regulations, or amendment thereto.

4 (c) For local governments planning under RCW 36.70A.040, promptly
5 after approval or disapproval of a local government's shoreline master
6 program or amendment thereto by the department of ecology as provided
7 in RCW 90.58.090, the local government shall publish a notice that the
8 shoreline master program or amendment thereto has been approved or
9 disapproved by the department of ecology. For purposes of this
10 section, the date of publication for the adoption or amendment of a
11 shoreline master program is the date the local government publishes
12 notice that the shoreline master program or amendment thereto has been
13 approved or disapproved by the department of ecology.

14 (3) All petitions relating to whether management recommendations
15 adopted by the department under RCW 36.70A.172(4) comply with the
16 requirements of RCW 36.70A.172(4) must be filed within sixty days after
17 the notice of proposed management recommendations for protecting the
18 functions and values of critical areas is published in the state
19 register pursuant to RCW 36.70A.172(4)(c)(iii).

20 (4) Unless the board dismisses the petition as frivolous or finds
21 that the person filing the petition lacks standing, or the parties have
22 filed an agreement to have the case heard in superior court as provided
23 in RCW 36.70A.295, the board shall, within ten days of receipt of the
24 petition, set a time for hearing the matter.

25 ~~((4))~~ (5) The board shall base its decision on the record
26 developed by the city, county, or the state and supplemented with
27 additional evidence if the board determines that such additional
28 evidence would be necessary or of substantial assistance to the board
29 in reaching its decision.

30 ~~((5))~~ (6) The board, shall consolidate, when appropriate, all
31 petitions involving the review of the same comprehensive plan or the
32 same development regulation or regulations.

33 **Sec. 4.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to
34 read as follows:

35 (1) The board shall issue a final order that shall be based
36 exclusively on whether or not a state agency, county, or city is in
37 compliance with the requirements of this chapter, chapter 90.58 RCW as

1 it relates to adoption or amendment of shoreline master programs, or
2 chapter 43.21C RCW as it relates to adoption of plans, development
3 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
4 90.58 RCW.

5 (2)(a) Except as provided in (b) and (c) of this subsection, the
6 final order shall be issued within one hundred eighty days of receipt
7 of the petition for review, or, if multiple petitions are filed, within
8 one hundred eighty days of receipt of the last petition that is
9 consolidated.

10 (b) The board may extend the period of time for issuing a decision
11 to enable the parties to settle the dispute if additional time is
12 necessary to achieve a settlement, and (i) an extension is requested by
13 all parties, or (ii) an extension is requested by the petitioner and
14 respondent and the board determines that a negotiated settlement
15 between the remaining parties could resolve significant issues in
16 dispute. The request must be filed with the board not later than seven
17 days before the date scheduled for the hearing on the merits of the
18 petition. The board may authorize one or more extensions for up to
19 ninety days each, subject to the requirements of this section.

20 (c) In a review under RCW 36.70A.280(1)(c), the board shall issue
21 a final order within two hundred seventy days of receipt of the
22 petition for review, or, if multiple petitions are filed, within one
23 hundred eighty days of receipt of the last petition that is
24 consolidated. The board may extend this deadline as provided in (b) of
25 this subsection.

26 (3) In the final order, the board shall either:

27 (a) Find that the state agency, county, or city is in compliance
28 with the requirements of this chapter, chapter 90.58 RCW as it relates
29 to the adoption or amendment of shoreline master programs, or chapter
30 43.21C RCW as it relates to adoption of plans, development regulations,
31 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

32 (b) Find that the state agency, county, or city is not in
33 compliance with the requirements of this chapter, chapter 90.58 RCW as
34 it relates to the adoption or amendment of shoreline master programs,
35 or chapter 43.21C RCW as it relates to adoption of plans, development
36 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
37 90.58 RCW, in which case the board shall remand the matter to the
38 affected state agency, county, or city. The board shall specify a

1 reasonable time not in excess of one hundred eighty days, or such
2 longer period as determined by the board in cases of unusual scope or
3 complexity, within which the state agency, county, or city shall comply
4 with the requirements of this chapter. The board may require periodic
5 reports to the board on the progress the jurisdiction is making towards
6 compliance.

7 (4) Unless the board makes a determination of invalidity as
8 provided in RCW 36.70A.302, a finding of noncompliance and an order of
9 remand shall not affect the validity of comprehensive plans and
10 development regulations during the period of remand.

11 (5) Any party aggrieved by a final decision of the hearings board
12 may appeal the decision to superior court as provided in RCW 34.05.514
13 or 36.01.050 within thirty days of the final order of the board.

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